THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 7147 of 2006

O r d e r:

The petitioner is a Manager with the respondents-Bank. On the ground that the petitioner sanctioned loan to an imposter and a fraudulent person, respondent No.1 placed him under suspension vide proceedings dated 25.06.2005. Thereafter, he was issued charge sheet dated 09.11.2005, stating that he failed to discharge his duties with utmost integrity, honesty, devotion and diligence and failed to protect the interests of the Bank. An enquiry was ordered into the charges. Before the Enquiry Officer, the respondents-Bank concluded its evidence, while the petitioner was called upon to adduce his evidence, and it is the case of the petitioner that the Enquiry Officer without giving him opportunity to adduce his evidence, called upon him to submit his written brief. While the enquiry is in progress, an investigation into the matter by the CBI was ordered, and the petitioner is even attending the said enquiry. In those circumstances, the petitioner made a representation dated 09.03.2006, requesting the respondents to stay the departmental proceedings till the CBI investigates into the matter, but the same was rejected. Hence, the petitioner filed this writ petition contending that since the CBI is investigating into the matter, continuance of disciplinary enquiry by the respondents in pursuance of the charge sheet dated 09.11.2005, is illegal, arbitrary and *mala fide*.

The learned counsel for the petitioner submits that on the very same charges on which the respondents are conducting departmental enquiry, simultaneously, the CBI is also conducting an enquiry, and having regard to the fact that the witnesses and the documents in the departmental enquiry and the criminal case are one and the same, continuance of departmental enquiry by the respondents against the petitioner pursuant to the charge sheet dated 09.11.2005, is illegal, arbitrary and *mala fide,* for the reason that if the departmental enquiry is continued, he will have to reveal his defence, which may prejudice his defence in the enquiry being conducted by CBI. In support of his contention that departmental proceedings and criminal proceedings cannot go on simultaneously, he placed reliance on the judgment of the

apex Court in **Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry**.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Bank.

Though the petitioner contends that the charges in the departmental enquiry and the CBI enquiry, as also the witnesses and documentary evidence to be produced, are one and the same, the fact remains, to appreciate the said contention, the petitioner except copy of the charge sheet, in respect of which, departmental proceedings have been initiated by the respondent-bank, has not filed any material, such as the report given by the respondent-Bank to the CBI, the FIR, if any, registered against him based on the report of the respondents-bank, and at what stage the investigation by the CBI is pending. The petitioner has not even stated as to what are the ingredients of the complaint lodged by the respondents against him before the CBI nor has he stated as to at what stage, the investigation by the CBI is pending, and at any rate, a reading of the averments made by the petitioner in support of the writ petition would disclose that the CBI is still investigating into the complaint, the case has not been registered yet.

Be that as it may, a reading of the order dated 09.03.2006, passed by the Assistant General Manager in the Zonal Office of the respondents, rejecting the request of the petitioner for staying the departmental proceedings till the CBI completes the investigation, would disclose that the charges for enquiry in the departmental enquiry and the CBI enquiry are entirely different and distinct of each other. To wit, it is appropriate to quote the contents thereof, which read:

> That the charge sheet dated 09.11.05 issued to you is for breach of Regulation 3(1) of the Bank of India Officer Employees' (Conduct) Regulations, 1976. Whereas, the charge sheet, if any, to be filed by the CBI will be under various provisions of the Indian Penal Code/Prevention of Corruption Act. Therefore, both the things, namely the departmental proceedings and the proceedings of the CBI, rest entirely on different footings.

From the above, it is clear that departmental enquiry has been initiated against the petitioner for breach of the Bank of India Officer Employees' (Conduct) Regulations, 1976, while the charges, if any, that would be filed the CBI against the petitioner, would be under the provisions of the Indian Penal Code/Prevention of Corruption Act, 1988.

The purpose of departmental enquiry and criminal proceedings, are different

and distinct of each other. This aspect of the matter was considered by the apex Court in **Hindustan Petroleum Corporation Ltd. V. Sarvesh Berry**, on which the learned counsel for the petitioner placed reliance. The apex Court held:

> The purpose of departmental enquiry and of prosecution is of two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted, it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relate to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded, is a settled legal position.

Be that as it may, in the absence of any material filed by the petitioner, which can make a comparison of the charges framed in the departmental enquiry vis-a-vis the CBI enquiry, it cannot be said that the charges, witnesses and the documentary evidence, in the departmental enquiry and the CBI enquiry, are one and the same. Hence, I am of the considered opinion that it is not a fit case where the departmental enquiry should be stayed or interfered with till the investigation by the CBI is completed.

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N.V. RAMANA, J.

Date: 28th April, 2006.

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